

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 28662 of 2006(K)

PETITIONER:

**SHARLIN PETER, CLERK,
ST.THOMAS HIGH SCHOOL, VECHOOCHIRA.**

**BY ADV. SRI.VIJU ABRAHAM
SRI.JOY C. PAUL
SRI.BENOY K.KADAVAN**

RESPONDENTS:

**1. SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

**2. DISTRICT EDUCATIOANL OFFICER,
PATHANAMTHITTA.**

**3. CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY OF SCHOOLS
DIOCESE OF VIJAYAPURAM, VIJAYAPURAM BISHOP'S
HOUSE, KOTTAYAM.**

**BY ADV. SRI.V.M.KURIAN
GOVERNMENT PLEADER SRI.K.U.MANOJKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

tss

W.P.(C) NO.28662/2006

APPENDIX

PETITIONER'S EXHIBITS

**EXT.P1:- COPY OF THE APPOINTMENT OF PETITIONER AS PART-TIME
MENIAL WITH THE ENDORSEMENT OF APPROVAL BY COMPETENT
AUTHORITY DT. 7.6.02.**

**EXT.P2:- COPY OF THE APPOINTMENT OF PETITIONER AS FULL-TIME
MENIAL WITH THE ENDORSEMENT OF APPROVAL BY COMPETENT
AUTHORITY DT. 3.9.02.**

**EXT.P3:- COPY OF THE OPRD
NO.17/03 DT. 30.8.03.**

**EXT.P4:- COPY OF THE ORDER DT. 17.6.05 OF THE DEPUTY DIRECTOR OF
EDUCATION, PATHANAMTHITTA.**

EXT.P5:- COPY OF THE ORDER DT. 23.12.05 OF THE 4TH RESPONDENT.

**EXT.P6:- COPY OF THE REVISION DT. 24.1.06 FILED BY 4TH RESPONDENT
BEFORE THE 1ST RESPONDENT.**

**EXT.P7:- COPY OF THE REPRESENTATION DT. 24.4.06 FILED BY PETITIONER
BEFORE THE -DO- DO-.**

EXT.P8:- COPY OF THE JUDGMENT DT. 8.6.06 IN WPC. 14974/06.

EXT.P9:- COPY OF THE GO(RT) NO.3772/G.EDN. DT. 24.8.06.

**EXT.P10:- COPY OF THE LETTER DT. 27.8.03 ISSUED BY THE CORPORATE
MANAGER, KOTTAYAM TO DEO, KANJIRAPPALLY.**

**EXT.R3(a):- COPY OF THE LETTER DT. 15.4.05 ISSUED BY THE MANAGER TO
SRI.LUIS JOHN.**

**EXT.R3(b):- COPY OF THE LETTER DT. 9.5.05 ISSUED BY THE MANAGER TO
DEO , KANJIRAPPALLY.**

/TRUE COPY/

P.A. TO JUDGE

tss

KURIAN JOSEPH, J.

W.P. (C). NO. 28662 OF 2006

Dated this the 7th day of September, 2007.

J U D G M E N T

The writ petitioner, a member of the non-teaching staff in an aided school under the 3rd respondent, is aggrieved since he is not in a position to draw his eligible salary for the last more than two years.

2. The dispute apparently is very simple, causing no financial burden to the State. The petitioner was appointed as Part Time Menial under the 3rd respondent on 07.06.2002. When a vacancy of Full Time Menial arose, he was appointed as Full Time Menial on 03.09.2002. While so, there arose a vacancy of Attender on 03.12.2002. Though petitioner was the eligible person to be appointed, the 3rd respondent-Manager overlooking the claim of the petitioner appointed another person - Louis John. That appointment was not approved since the eligible claim of the petitioner was not considered. Subsequently, the said Louis John abandoned the service and left the institution.

3. There is no dispute that the petitioner is the only eligible candidate to be appointed as Clerk against retirement vacancy

which arose on 10.02.2004. The resultant position is that the petitioner is entitled to be appointed as Attender with effect from 03.12.2002, he is liable to the promoted and appointed as Clerk with effect from 10.02.2004. There is no rival claimant to these posts. Therefore, the simple exercise to be undertaken by the concerned educational officer is to regularize the appointment of the petitioner in the resultant vacancies. Hence, this writ petition is disposed of as follows:

- 1) There will be a direction to the 3rd respondent to appoint the petitioner as Attender in the regular vacancy which arose on 03.12.2002.
- 2) There will be a further direction to the educational officer concerned to approve the appointment of the petitioner as Attender with effect from 03.12.2002.
- 3) There will be a direction to the 3rd respondent to promote and appoint the petitioner as Clerk with effect from 10.02.2004.
- 4) There will be a direction to the educational officer concerned to approve the appointment of the

petitioner as Clerk with effect from the said date.

- 5) The orders as above shall be passed by the 3rd respondent within a period of two weeks from the date of production of a copy of this judgment and the resultant action as above regarding the approval shall be made by the concerned educational officer within a period of another one month.

Since there is a regular vacancy in the post of Attender with effect from 03.12.2002 and since nobody else has been duly appointed and paid salary in the said post of Attender with effect from 03.12.2002 and since there is a regular vacancy in the post of clerk with effect from 10.02.2004 and nobody else has been duly appointed and paid salary in the said post of Clerk, and since the petitioner has been unjustly denied the benefits, the petitioner shall be entitled to salary and other service benefits with effect from the date of appointment, namely 03.12.2002 in the post of Attender and 10.02.2004 in the post of Clerk. The benefits as above shall be computed and disbursed to the

petitioner by the competent Educational Officer within a period of two months from the date of production of a copy of this judgment.

KURIAN JOSEPH, JUDGE.

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